

agency received the initial deposit of \$341 from the first defendant at the time of the sale of the vehicle to him. The plaintiffs then purported to purchase the vehicle from the agency for \$1,025 when, in fact, the property in the vehicle had already vested in the first defendant. The plaintiffs then entered a fictitious credit of \$341 in the agreement in order to make it appear that the first defendant had paid that amount to the plaintiffs at the time of the execution of the agreement when this was obviously not true.

In view of my finding that the vehicle was, in fact, sold on 2nd June, 1962 by the agency to the first defendant, I do not think that it is open to me to find that the plaintiffs purchased the vehicle from the agency for \$1,025 on the same date. I therefore, find that the first defendant was the owner of the vehicle at the time of the execution of the agreement and that there was no sale of the vehicle by the first defendant to the plaintiffs at any time. It follows that the plaintiffs were never the owners of the vehicle. All they did was to advance the sum of \$1,025 to the agency on behalf of the first defendant after the latter had purchased the vehicle from the agency. A "hire charge" of \$266.50, which was admitted by the plaintiffs to represent interest on this amount for two years, was included in the agreement. This was, in effect, interest on the loan of \$1,025. The second defendant therefore, when he signed the guarantee form was, in effect, a surety for this loan.

As Lord Goddard C.J. said in *Polsky v. S. and A. Services*.⁽²⁾

"If the defendant had bought this car from a dealer, all these documents would have been completely in order and no question could have arisen as to the Bills of Sale Acts having any application to the transaction. What I have to decide is whether this transaction was in fact what it purported to be or whether it was in truth no more than a loan by the defendants of £400, with interest, on the security of the car. If the latter is the true view of the transaction, it is clear that the hire-purchase agreement was no more than an assurance of personal chattels by way of security for the payment of money, and accordingly, it is a bill of sale within the meaning of the Bills of Sale Act (1878) Amendment Act, 1882, section 3, and, being unregistered, it is void under section 8 of the Act. A considerable number of cases were cited to me on the point which may, I think, be conveniently divided into two lines of authority. There is, on the one hand, the class of case, of which *Yorkshire Railway Wagon Co. v. Maclure* and *British Railway Traffic & Electric Co. v. Kahn* are good examples, where the transaction in question has been held to be a genuine sale followed by a hire-purchase agreement, and, therefore, unaffected by the Bills of Sale Acts, and, on the other hand, there is the class, which includes *Re Watson*, *Ex. parte Official Receiver in Bankruptcy* and *Madell v. Thomas & Co.*, where the court has held, on facts not very dissimilar from those in the present case, that the real transaction was one of loan, and, therefore, it was avoided by reason of the Acts. There is no doubt, I think, as to the deciding principle. The court has to determine whether the transaction in question is a genuine sale by the original owner of the chattel to the person who is finding the money and a genuine re-letting by the latter to the original owner on hire-

A purchase terms, or whether the transaction, though taking that form, is nothing more than a loan of money on the security of the goods. It is perfectly clear from the judgments of Lord Esher M.R. in *Re Watson* and in *Madell v. Thomas & Co.* that that is the question which has to be determined. The court is not to look merely at the documents. It must discover what the real transaction was".

B I have therefore, come to the conclusion that it would be wrong for me to hold that this case falls within that class of cases which have been held not to contravene legislation relating to moneylending and/or bills of sale.

C I understand that there are several outstanding writs of a similar nature by the plaintiffs against other purchasers of vehicles and the second defendant as guarantor. My finding in this case is based on its own peculiar facts as adduced in evidence. If the truth indeed is that there was, in fact, a prior binding arrangement between the plaintiffs and the second defendant which the plaintiffs can prove (but have failed to do in the present case) it will be open to them to profit by their present unfortunate experience and to ensure that such evidence is led in which event they may be able to attain a different result.

D The claim of the plaintiffs is accordingly dismissed as against both defendants.

E I will now consider submissions on the question as to whether I should make any order as to costs.

Claim dismissed.

F Solicitors: J. Tan Chor-Yong & Co.; Pillai & Co.

IN RE XY & CO.

[O.C.J. (Buttrose J.) February 18, 1966]

[Singapore — Case Stated No. 1 of 1963]

G *Income Tax Ordinance (Cap. 166), ss. 73, 76 and 84 — Notices of assessment against firm — Appeal to Board of Income Tax Review and High Court — Appeal disposed of — Additional assessment by Comptroller of Income Tax — Question at issue not decided in appeal from original assessment — Discovery of new facts — Onus of proof.*

H This was a case stated under section 82 of the Income Tax Ordinance by the Income Tax Board of Review for the opinion of the High Court. The Comptroller of Income Tax had issued a notice of assessment and notices of additional assessment in 1951 and arising from this additional assessment there had been an appeal to the Board of Income Tax Review and the High Court and the appeal was disposed of. One of the items not in dispute was the devaluation of the closing stock. In 1957 the Income Tax Department examined certain documents relating to the stock records of the firm, not previously tendered to the department, and as a result further additional assessments were raised on the firm, in respect of the devaluation of the closing stock. It was contended that as the original additional assessments had been dealt with on appeal, the Comptroller of Income

Tax was precluded from making the further additional assessments. The firm appealed against the assessments to the Board of Review who referred the question to the High Court.

Held: (1) the Comptroller of Income Tax was entitled to raise the additional assessments as the question at issue had not been decided by the Board or on appeal from the Board;

(2) the discovery of new documents which were not taken into account and were not available to the Comptroller or the Board when the additional assessments were determined on appeal permitted the making of further additional assessments which were not affected by those previous determinations;

(3) the 1957 additional assessments were therefore valid and in accordance with the provisions of the Ordinance.

Cases referred to:—

- (1) *Cenlon Finance Co. Ltd. v. Ellwood* [1960] 3 All E.R. 390; [1961] Ch. 50; [1960] 3 W.L.R. 690; C.A., [1961] 2 All E.R. 859; [1961] Ch. 634; [1961] 3 W.L.R. 242; H.L., [1962] 1 All E.R. 854; [1962] A.C. 782; [1962] 2 All E.R. 871, 40 T.C. 176.
- (2) *Cansick v. Hochstrasser* (1961), 40 T.C. 151.
- (3) *Brooks v. Commissioners of Inland Revenue* 7 T.C. 236.
- (4) *Commissioners of Inland Revenue v. Sneath* 17 T.C. 149.
- (5) *Anderton and Halstead Ltd. v. Birrell* 16 T.C. 200.
- (6) *Kidston v. Aspinall* (1903), 41 T.C. 371.
- (7) *A.B.C. v. Comptroller of Income Tax, Singapore* [1959] M.L.J. 162 at p. 166.

SPECIAL CASE.

L. A. J. Smith for the 1st and 3rd appellants.

S. H. D. Elias for the 2nd appellant.

G. S. Hill for the Comptroller of Income Tax.

Cur. Adv. Vult.

Buttrose J.: This is a case stated under section 82 of the Income Tax Ordinance (Chapter 166) hereinafter referred to as 'the Ordinance' by the Board of Income Tax Review, hereinafter referred to as 'the Board', for the opinion of the High Court and relates to appeals against certain additional assessments to income tax raised in 1957 in respect of the partnership business of XY & Co. for the period 1st January, 1950 to 14th May, 1951, on which latter date the partnership terminated.

The position was that the appellants, who were the partners of the firm of XY & Co. during the above period, were originally assessed for the year of assessment 1951 by notices of assessment dated the 3rd October, 1951. By notices of additional assessment dated the 8th July, 1953, the appellants were further assessed to tax in respect of the years 1950 and 1951. Notices of objection to these additional assessments were given to the Comptroller by letter dated the 30th July, 1953, who refused to amend them and

A notices of appeal to the Board against this refusal were lodged by the appellants on the 17th May, 1954, and a petition of appeal was filed on the 9th June, 1954.

The appeal was part heard by the Board in October and November, 1954, and related to assessments on the income of the appellants as partners of the firm of XY & Co. from the 1st January, 1950, to the 14th May, 1951. There was also a further appeal against the assessment of the appellants for the remainder of the year 1951, but it was agreed that a decision in respect of the period 1st January, 1950, to 14th May, 1951, should be given first.

The Board gave its decision on the 3rd December, 1954, but made no final order on the assessments under appeal and adjourned the remainder of the appeal *sine die*.

The appellants thereupon appealed to the High Court against the Board's decision in respect of only one of the disputed items and the Comptroller cross-appealed against another. By consent, the High Court allowed the appellants' appeal to a limited extent and dismissed the Comptroller's cross-appeal. The appellants then appealed to the Court of Appeal but their appeal was dismissed.

In or about October or November, 1957, and prior to December of that year the Income Tax Department examined certain documents relating to the stock records of XY & Co. relevant to the period 1950 to the 14th May, 1951, not previously tendered to the department. As a result of the examination of these documents further additional assessments were raised on the appellants on the 5th December, 1957, arising from their share of the income of XY & Co. during the period 1st January to 14th May, 1951.

It is these further additional assessments hereinafter referred to as 'the 1957 additional assessments' which are now the subject of an appeal to the Board which has stated the present case for the opinion of this court.

To complete the picture, I think, I should add that the appeals for the remainder of the year 1951, which had been adjourned *sine die* by the original Board, were finally dealt with and disposed of by another Board in August, 1961 when in making its final assessment for the whole period under review, namely 1950 and 1951 it took into account the figures arrived at by the original Board.

The questions stated in the case for decision were:—

1. Is the Comptroller entitled to allege that the determination of the Board in appeal No. CSO 2463 of 1954 and/or the judgment of the High Court in District Court Appeal No. 22 of 1955 and/or the judgment of the Court of Appeal in Civil Appeal No. 19 of 1956 do not constitute a determination on appeal within the meaning

of section 84 of the Income Tax Ordinance, in view of his cross-appeal to the High Court and his conduct subsequent to the said decision and judgments?

2. Whether the said determination by the Board, and/or the said judgments of the High Court and the Court of Appeal, as to the appellants' assessable income from the source of their partnership in the firm of XY & Co. for the period from the 1st January, 1950, to the 14th May, 1951, is final and conclusive in respect of that period (including any part thereof, and particularly from the 1st January, 1951, to the 14th May, 1951) for the purpose of the Ordinance, subject to the proviso to section 84 of the Ordinance?

3. Whether the onus is on the Comptroller to prove that the 1957 additional assessments do not involve re-opening any matter which has been determined on appeal, so as to bring them within the proviso to section 84 of the Ordinance, or whether the onus is on the appellants to prove that the 1957 additional assessments do involve re-opening any matter which has been determined on appeal in order to rely on the protection of section 84 of the Ordinance?

4. Whether, irrespective of the question on which party is the onus of establishing the applicability of the proviso to section 84 of the Ordinance, the facts on record and in evidence are sufficient to establish that the 1957 additional assessments are invalid, or alternatively precluded, by section 84 of the Ordinance?

5. Whether the principle of *res judicata* applies in the circumstances of the present case, so as to prevent re-litigation of the question of the amount of the appellants' income from the source of their partnership in the firm of XY & Co. during the period from the 1st January, 1950 to the 14th May, 1951, or any part of that period, and particularly from the 1st January, 1951, to the 14th May, 1951?

6. Whether the discovery by the Comptroller of fresh facts relating to the appellants' income from the source of their partnership in the firm of XY & Co. during the period from the 1st January, 1951 to the 14th May, 1951, (if it should be established) would

(i) exclude the operation of section 84 of the Ordinance?

(ii) exclude the application of the principle of *res judicata*?

7. Whether the 1957 additional assessments are valid and in accordance with the provisions of the Ordinance.

The main and substantial question for consideration was as to whether the 1957 additional assessments were valid and in accordance with the provisions of the Ordinance.

It was contended on behalf of the appellants that in view of the determination by the Board and the judgments of the High Court and the Court of Appeal as to the appellants' assessable income from the source of their partnership in the firm of XY & Co. for the period 1st January, 1950, to 14th May, 1951, when it was dissolved, the same had been determined and was final and conclusive for all purposes as regards the amount of the chargeable income; that the 1957 additional assessments were in respect of alleged income from the same source during part of the same period and involved re-opening the matters which had been determined in the said appeal; and that consequently the 1957 additional assessments were invalid or alternatively precluded by

A section 84 of the Ordinance as well as by the principle of *res judicata* and could not be re-opened or re-litigated.

For the proper determination of this question, it is necessary to consider the effect of sections 73 and 84 of the Ordinance.

B Section 73 is as follows:—

"73. (1) Where it appears to the Comptroller that any person liable to tax has not been assessed or has been assessed at a less amount than that which ought to have been charged, the Comptroller may within the year of assessment or within six years after the expiration thereof, assess such person at such amount or additional amount as according to his judgment ought to have been charged:

C Provided that where any form of fraud or wilful default has been committed by or on behalf of any person in connection with or in relation to tax, the Comptroller may, for the purpose of making good any loss of tax attributable to fraud or wilful default, assess such person at any time.

D (2) The provisions of this Ordinance as to notice of assessment, appeal and other proceedings under this Ordinance shall apply to any assessment or additional assessment made under the provisions of subsection (1) of this section and to tax charged thereunder."

Section 84 is as follows:—

E "84. Except as expressly provided in this Ordinance, where no valid objection or appeal has been lodged within the time limited by this part against an assessment as regards the amount of the chargeable income assessed thereby, or where the amount of the chargeable income has been agreed to under subsection (4) of section 76 of this Ordinance, or where the amount of such chargeable income has been determined on objection or appeal, the assessment as made or agreed to or determined on appeal, as the case may be, shall be final and conclusive for all purposes of this Ordinance as regards the amount of such chargeable income:

F Provided that nothing in this part shall prevent the Comptroller from making any refund under the provisions of section 93 of this Ordinance or any assessment or additional assessment for any year of assessment which does not involve re-opening any matter which has been determined on appeal for the year."

G On the proper construction of these sections the Comptroller, so it seems to me, subject to time limits, can always raise additional assessments where the matter has not gone to the Board. Where it has gone to the Board and been determined by it or on appeal the Comptroller cannot subsequently substitute his own opinion for that of the Board or the appellate court and cannot raise additional assessments which have the effect of re-opening their decision provided the matter in question was one which the Board or the appellate court actually dealt with.

I Under the proviso to section 84 of the Ordinance the Comptroller may make an assessment or additional assessment for any year of assessment which does not involve re-opening any matter which has been determined on appeal for the year. The phrase used is 'any matter' which has been determined on appeal for the year not 'any assessment'.

What matter or matters then did the Board determine? As the Board indicated in its grounds of decision the computation of the Comptroller included a number of items, some of which were disputed and some of which were not.

One of the items not in dispute at that time was "Closing stock devaluation — \$86,627", the very item in respect of which the 1957 additional assessments are sought to be raised by the Comptroller. All these undisputed items were accordingly, without more ado, admitted chargeable to tax.

The Board then proceeded to a consideration of the nine disputed items, heard evidence with regard to them and proceeded to make an award in respect of them. To this award it added the amount of the undisputed items in order to arrive at the figure of assessment for the period under review, namely 1st January, 1950, to 14th May, 1951. The undisputed items were never litigated at all.

It will, I think, be convenient here to refer to the corresponding sections of the English Income Tax Act, 1952, namely sections 41 and 50. Section 41 deals with additional assessments and section 50(2) provides that an appeal once determined by the Commissioners shall be final and neither the determination of the Commissioners, nor the assessment made thereon shall be altered, except by order of the court when a case has been required as provided by this Act.

These sections are in *pari materia* with our sections 73 and 84 respectively, and this was conceded, and the English cases dealing with them are therefore of some guidance.

The only other section in the English Income Tax Act, 1952, to which reference need be made is section 510 which says:—

"Subject to the provisions of this section, where a person gives notice of appeal to the General Commissioners, the Special Commissioners or the Board of Referees against an assessment to, or a decision of any kind with respect to, income tax other than surtax or surtax, and, before the appeal is determined by the Commissioners or Board, the surveyor or other proper officer of the Crown and the appellant come to an agreement, whether in writing or otherwise, that the assessment or decision should be treated as upheld without variation, or as varied in a particular manner or as discharged or cancelled, the like consequences shall ensue for all purposes as would have ensued if, at the time when the agreement was come to, the Commissioners or Board had determined the appeal and had upheld the assessment or decision without variation, had varied it in that manner or had discharged or cancelled it, as the case may be."

Then, in order to see what the consequences would be if the matter had gone to appeal, one must refer back to section 50(2) to which I have just referred.

Our section 76(4) of the Ordinance provides that in the event of any person being assessed

A who has objected to an assessment made upon him, agreeing with the Comptroller as to the amount at which he is liable to be assessed, the assessment shall be amended accordingly and notice of the tax payable shall be served upon such person. By section 84 of the Ordinance an agreement under section 76(4) is made final and conclusive as regards the amount of the chargeable income.

B It was argued by the appellants that what was made final and conclusive by section 84 of the Ordinance was the determination by the Board of the amount of the taxable income of the appellants from the firm of XY & Co. for the period 1950 to 14th May, 1951, and that once an appeal had been heard and determined in no circumstances could any further additional assessments be made in respect of the income for that period.

C The same point was taken before Cross J. in *Cenlon Finance Co. Ltd. v. Ellwood* ⁽¹⁾ and this is what the learned judge had to say about it:—

"If this were right then it would follow that if an appeal was brought against an assessment on some point of law, the revenue authorities could not make an additional assessment after the hearing of that appeal, even if they found that the taxpayer had fraudulently concealed the true amount of his receipts for that year. I see no reason for construing section 50 in a way which would lead to so extravagant a result. I think that the section means no more than that the determination of the appeal by the Commissioners is to be final with regard to the particular matter which was the subject of the appeal".

F This cannot be construed, in my view, as merely being limited to one isolated item but to any matter or matters which were the subject of appeal; in the present case the nine disputed items as to which the Board's decision was final and conclusive.

G I find myself in entire agreement with the observations of Cross J. The case went to the Court of Appeal and finally to the House of Lords.

H In the Court of Appeal Upjohn L.J. (in 40 T.C. at p. 196) expresses the same view as Cross J. in these words

"It seems to me that section 50(2) is directed to the case where a particular point has been determined, and when that point has been determined it cannot be re-litigated".

A similar expression of opinion by Pearce L.J. is found at p. 199. In the House of Lords the views of Cross J. were not dissented from.

I In *Cansick v. Hochstrasser* ⁽²⁾ a case not dissimilar to the present one, Buckley J. accepts and applies the views expressed by Cross J. in the *Cenlon* case, *supra*. At p. 156 the learned judge refers to the point in this way:—

"The other ground upon which the present appeal is

based is what in the course of the argument has been called, rather loosely, the *res judicata* ground;"

that is to say that the Special Commissioners by their decision had finally determined the amount of the taxpayer's chargeable income for the years under appeal.

In rejecting this argument the learned judge after reviewing the authorities including *Brooks v. Commissioners of Inland Revenue*,⁽³⁾ *Commissioners of Inland Revenue v. Sneath*,⁽⁴⁾ the *Cenlon* case *supra* and *Anderton and Halstead Ltd. v. Birrell*⁽⁵⁾ goes on to say at p. 159 that the contention on behalf of the Crown in the case before him was that the operation of section 50(2) only relates to the particular matter to which that appeal relates; and that, if other circumstances come to light which were not before the tribunal which decided that appeal which justify some further assessment or surcharge, the fact that the earlier appeal has been determined does not preclude those matters from being the basis for new assessments or surcharge.

He concludes by saying:—

"In the present case, since the matter was dealt with by the Special Commissioners in March, 1949, further matters have come to the notice and attention of the Inspector. He has seen further accounts of the taxpayer's business.....and, in my judgment, it was open, on those new facts, to the Commissioners to make a further additional assessment in respect of the years in question. The decision of the Special Commissioners in March, 1949, was one which could not have been challenged with regard to the particular subject with which they were concerned; that is whether the additional assessment of £50 each in respect of the three years with which they were concerned was justified or not upon the facts as then known to them. But I think it was conclusive on that matter and that matter only".

Finally, there was the case of *Kidston v. Aspinall*⁽⁶⁾ where the same sections were again considered by Wilberforce J. He refers to the *Cenlon* case and to *Cansick v. Hochstrasser* and sees no reason to differ from the points of view expressed by Cross J. and Buckley J. and arrives at the conclusion that the power to raise additional assessments under section 41 of the English Income Tax Act, 1952 is limited only to the extent where there has been an agreement as to a particular point that particular point cannot be later re-opened.

I agree with these observations.

In my view the Comptroller is always entitled to raise additional assessments where the question at issue has not been decided by the Board or on appeal therefrom.

In the present case the question of the valuation of stocks was never litigated at all; it was not a matter which had been determined by the Board. The proviso to section 84 therefore applies and the Comptroller, in my opinion, may make additional assessments as they do not involve re-opening any matter which has been

A determined on appeal. The principle of *res judicata* has no application.

B If I am wrong in this I am, nevertheless, of the opinion that the discovery of new facts which were not taken into account and were not available to the Comptroller or the Board when these additional assessments were determined on appeal permits the making of further additional assessments which are not affected by those previous determinations.

C It was not until 1957 that the Comptroller discovered that the correct stock position of the appellants as partners in XY & Co. had not been given to him and, in my view, on the authority of *Cansick v. Hochstrasser* and *Kidston v. Aspinall*, *supra*, the Comptroller was clearly entitled to raise these 1957 additional assessments.

D It is now well settled law that the word 'discover' means to find out and applies to the discovery of an error of law as well as an error of fact. But as was pointed out by the learned editors of *Simon's Income Tax Vol. I* (Replacement 1964-65) at p. 189-190 "an error in law cannot be corrected for any year for which the point of law was adjudicated upon in an appeal or was taken into account in the settlement of the appeal by agreement under section 510 of the English Income Tax Act, 1952. Where, however, new facts which were not known at the time of settlement of an appeal, come to light, a further assessment can be made".

F In my judgment therefore the 1957 additional assessments are valid and in accordance with the provisions of the Ordinance.

G I have already expressed my views on the onus of proof in *A.B.C. v. The Comptroller of Income Tax, Singapore*⁽⁷⁾ and it is unnecessary, nor do I propose, to re-state them.

H It will be sufficient to say that I see no reason to differ from the views I then expressed.

I By section 80(3) of the Ordinance the onus of proving that the assessment is excessive is placed on the taxpayer — the appellants in this case. If they seek to show that these 1957 additional assessments are excessive by contending that the previous assessments are final and conclusive under section 84 of the Ordinance and *res judicata* the onus is on them for establishing these or any other matters on which they rely for this purpose. The onus throughout is on the taxpayer.

I There is in my view no substance in the other points raised on behalf of the appellants. The Comptroller was perfectly entitled to demand and sue for the amount found to be due by the Board of Review for the period 1950 to 14th May, 1951. Under section 85 of the Ordinance as it then stood, as the time for appeal had

expired and the amount could not be then in dispute it was open to him to enforce payment. No question of *estoppel* by conduct, in my opinion, arises.

The Comptroller is not limited to one additional assessment but can raise as many as as he likes, see *Cansick v. Hochstrasser, supra*, at page 156.

For these reasons therefore I answer the questions in the case stated as follows:—

First question	Yes
Second question	No
Third question	Onus on appellants
Fourth question	No
Fifth question	No
Sixth question	Yes to both (i) and (ii)
Seventh question	Yes

There will be an order remitting the matter back to the Board with a direction that it continue with the hearing in the light of the answers I have given to the questions in the case stated.

Order accordingly.

Solicitors: *Elias Bros.; Laycock & Ong; Rodyk & Davidson.*

SALBIAH & ANOR. v. NANYANG INSURANCE CO. LTD.

[O.C.J. (Gill J.) February 18, 1966]

[Malacca — Civil Suit No. 30 of 1964]

Insurance — Motor insurance — Action to recover damages from insurers of motor car — Motor car transferred under agreement for sale to be followed by hire purchase — Insurance in name of original owner but car in possession of intended hire-purchaser — Whether original owner has insurable interest — Road Traffic Ordinance, 1958, ss. 75 and 80.

In this case the facts were that one Lau Teck Siew a partner in a firm which dealt in second hand cars became the registered owner of a motor car bought by the partnership. The insurance policy of the car which was insured with the defendant company was transferred to and vested in Lau Teck Siew. Subsequently on February 9, 1961 an agreement was entered into with one Karim under which Karim obtained possession of the car on payment of a deposit of \$1,000 and a promise to pay the balance of \$2,400. The agreement provided that in the event of failure to pay the balance, the "vendor" was to have the right to seize the car and forfeit the deposit. It was intended that there would be a hire-purchase agreement relating to the car and this was signed on March 17, 1961, when ownership of the car was transferred to a finance company. On March 8, 1961, the car driven by Karim was involved in an accident as a result of which the 1st plaintiff sustained injuries. The plaintiffs obtained judgment against Karim in the sum of \$2,228 and costs and they sought to enforce this judgment against the defendants, the insurance company. The defendants denied liability on the ground that Lau Teck Siew had sold the car to Karim and therefore the accident was not covered by their policy of insurance.

Held: (1) the agreement in this case was a conditional contract of sale and Lau Teck Siew was the owner

A of the car at the time of the accident and he had an insurable interest in it;

(2) at the time of the accident the car was being driven by Karim on the implied order or with the implied consent and permission of Lau Teck Siew and therefore the defendants were liable under their policy of insurance.

Cases referred to:—

- B (1) *Rogerson v. Scottish Automobile and General Insurance Co. Ltd.* [1931] All E.R. Rep. 606.
(2) *Tattersall v. Drysdale* [1935] 2 K.B. 174.
(3) *Peters v. General Accident Fire and Life Insurance Corporation Ltd.* [1938] 2 All E.R. 267.
(4) *Yeoman Credit Ltd. v. Apps* [1962] 2 Q.B. 508 at p. 522.

C CIVIL SUIT.

H. E. Cashin for the plaintiffs.

Keith Sellar for the defendants.

Cur. Adv. Vult.

Gill J.: In this action the plaintiffs are seeking under the provisions of section 75(3) and section 80(1) of the Road Traffic Ordinance, 1958 to recover from the defendants as the insurers of motor car SR 4805 the benefit of a judgment which they obtained in the High Court at Malacca against one Karim bin Mohamed Nor alias Hashim bin Mohamed Nor in respect of damages for personal injuries sustained by the first plaintiff in a road accident involving the said car when it was being driven by the said Karim.

The defendants became insurers of the car by their policy of insurance No. PC/4711/C/60 dated the 1st September, 1960 and issued in the name of the then owner of the car named Ang Hway Sim for a period of one year from the date of issue. The policy contained the usual agreement on the part of the insurer to indemnify the insured in the event of any accident caused by or arising out of the use of the motor car against all sums including claimants' costs and expenses which the insured shall become legally liable to pay in respect of death of or bodily injury to any person. There was a further clause in the policy extending the indemnity to any authorised driver.

H As from 3rd November, 1960 the interest in the policy was transferred to and vested in one Lau Teck Siew of 54 Short Street, Singapore on his becoming the owner of the car. Lau Teck Siew's proposal and declaration dated 3rd November, 1960 were deemed to be incorporated in and to be the basis of the contract, and he was to be deemed the insured.

I On the date of the purchase of the car Lau Teck Siew was a partner in Sin Thye Hin Trading Co. which was carrying on business both in Singapore and Malacca as dealers in second-hand motor cars. The car was purchased in Singapore and registered in the name of Lau